

Remarks

In the Office Action, claims 1-12 were pending with claims 1, 11 and 12 being independent claims.

By this amendment, Applicant has canceled claims 1 and 11 for convenience purposes only, and has amended claims 2, 5, 6, 9, 10 and 12. Applicant also presents herein new claims 13 – 22. Applicant believes that all of the amendments and new claims do not introduce new matter. Review and reconsideration of the application and the new claims are respectfully requested.

A. Power of Attorney

Applicant respectfully draws the Examiner's attention to the fact that a Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address, signed by the assignee of record, was filed in the above-captioned patent application on May 26, 2005. For convenience, copies of these documents are attached hereto as Exhibit A. This new Power of Attorney gives the undersigned attorney the authority to prepare and file this Response.

B. Allowable Subject Matter

The Examiner has objected to claims 6-8 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

In response, Applicant has amended claim 6 to be an independent claim, whereas claims 7 and 8 depend either directly or indirectly from newly independent claim 6. Accordingly, Applicant respectfully asserts that the Examiner's objection has been rendered moot, thereby placing claims 6-8 in proper condition for allowance.

C. Rejection of claims 1, 11 and 12 under 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 11, and 12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 922,165 to Lee ("the '165 patent"). In particular, the Examiner contends that the '165 patent discloses a portable, traffic control device and its method of use as set forth in these claims.

In response, Applicant has canceled both independent claims 1 and 11, thereby rendering the Examiner's rejection of these two claims moot.

Regarding independent method claim 12, Applicant has amended this independent claim to include the structural limitations of claims 1 and 6. Therefore, Applicant respectfully asserts that because the Examiner found claim 6 to be allowable if re-written in independent form, claim 12 having the same structural limitations as amended claim 6 also is allowable.

In addition, Applicant has amended claim 12 to include the step of "locking said first plurality of blades in said first position." This step explicitly claims the function of locking the blades on the first shaft in the first, or up, position such that the blades do not freely rotate about the first shaft and return to the second, or down position. This step is not taught or disclosed in the '165 patent. In fact, the '165 patent does not provide any means for locking the horns 12 in an up position. The pointed horns 12 are connected via prongs 10 to a shaft (cross piece 9) that freely rotates in a hole (bearing 7) bored in the end pieces (stringers 5). *See* FIGs. 3 and 4, Col. 1, Lines 43-51; Col. 2, Line 1. The shaft 9 and prongs 10 always are rotatable in order to accommodate the dragging of hosepipe across the cattle guard of the '165 patent. *See* Col. 2, , 68-74. This element of always having the shaft freely rotate is expressly counter to the present invention wherein the blades may be locked in an upright position such that the shaft does not rotate. Therefore, Applicant respectfully asserts that amended claim 12 is in proper condition for allowance because it includes the structural limitations of claims 1 and 6, as well as, it includes the step of locking the blades in the up (or first) position.

D. Rejection under 35 U.S.C. § 103(a)

The Examiner rejected claims 2-5, and 9 under 35 U.S.C. § 103(a) as being unpatentable over the '165 patent to Lee and in view of U.S. Patent no. 4,097,170 to Dickinson ("the '170

patent"). In particular, the Examiner contends that the '165 patent discloses the claimed portable, traffic control device except for a housing having top and base plates for protecting the device from the ambient environment, which are then disclosed in the '170 patent. Regarding claims 5 and 9, the Examiner also contends that the '165 patent and the '170 patent disclose several degrees of orientation for the blades and that the '170 patent teaches the connection of a traffic stopping device to similar devices to form an elongated bladed barrier to traffic.

The Examiner also rejected claims 9 and 10 under 35 U.S.C. 103(a) as being unpatentable over the '165 patent in view of U.S. patent no. 5,588,774 to Behan ("the '774 patent"). In particular, the Examiner contends that the '165 patent discloses the claimed portable, traffic control device except for an interconnectable housing for interconnecting a plurality of similar traffic control devices, which is then disclosed in the '774 patent.

In response, Applicant has canceled claim 1, thereby rendering the Examiner's rejection of this claim moot. Applicant also has rewritten claim 6 to be an independent claim, which is allowable (see above Paragraph B).

Regarding claims 2, 5 and 9, Applicant has amended these claims to depend directly from allowable claim 6, thereby rendering these dependent claims allowable. Claims 3-4 depend on allowable claim 2 and claim 10 depends on allowable claim 9. Thus, Applicant respectfully asserts that claims 2-5, and 9-10 depend either directly or indirectly from newly independent and allowable claim 6, thereby placing these claims in proper condition for allowance. *See* DONALD S. CHISUM, CHISUM ON PATENTS § 7.04[2]; *U.S. v. Telectronics, Inc.*, 658 F. Supp. 579, 591, 3 USPQ2d 1571, 1580 (D. Colo. 1987), *aff'd in part and rev'd in part*, 857 F.2d 788, 8 USPQ2d 1217 (Fed. Cir. 1988), *cert. denied*, 109 S.Ct. 1954 (1989)("Since it would not have been obvious to have made the invention defined in claim 1, ... it would not have been obvious to make the inventions defined in dependent claims 3, 4, and 5"); *In re Fine*, 837 F.2d 1071, 1076, 5 USPQ2d 1596, 1600 (Fed Cir. 1988)("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.").

E. New Claims

Applicant has added new claims 13-22. Claims 13-16 depend on independent method claim 12. For reasons discussed above, independent claim 12 is allowable, resulting in dependent claims 13-16 also being allowable. Claims 17-22 depend either directly or indirectly from allowable independent claim 6. Thus, Applicant respectfully contends that these new claims 17-22 contain all of the same limitations of the independent claim such that they too are in proper condition for allowance.

F. Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in proper condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,



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